IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.991 OF 2006

M/s. Salasar Resins & Allied Co. and ors.
..Petitioners.
Vs.
Sitram Churiwala and anr.
..Respondents.

Mr.V.K.Gupta with V.K.Thorat for the petitioners.
Mrs. G.P.Mulekar, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 02/5/2006.

P.C.

1. This petition is directed against the order of the lower court allowing the original complainant to lead the evidence of an additional witness in the proceeding U/s.138 of the Negotiable Instruments Act. The complainant closed his evidence and thereafter evidence of two defence witnesses was led. It appears that the defence was that the complainant had left the services in the year 1998. In the cross examination of one of the defence witness, the complainant sought to prove certain documents addressed to the Government office to indicate that the relationship still continued. The veracity of the said documents is denied and hence, application is made U/s.311 of the Cr.P.C. for leading the evidence of Government Officer. The trial court allowed the application and the revisional court

rejected the revision filed by the petitioners. It is sought to be contended that the trial court ought not to have allowed the complainant to lead such additional evidence when the witness could have been examined earlier. It is seen that being the government documents, the complainant may have thought that the veracity of atleast such documents will not be challenged by the petitioners. In view of these circumstances, he may not have led the evidence to prove such documents at an earlier stage. However, there is no bar U/s.311 of the Cr.P.C., which prohibits the court from allowing a party to lead evidence which would have a bearing on a just and fair decision of the case and such evidence can be allowed at any stage of trial. It appears that both the courts have exercised their jurisdiction. In my view, this is not a fit case for interference. Reliance was placed upon judgment of this court in the case of **Faterhsinh M. Chauhan Vs. Union Territory of Dadra & Havali, Silvassa reported in 2005 ALL MR ((Cri.) 339** where it has been held that the court has to be circumspect in exercise its powers U/s.311 of the Cr.P.C. Even so, the matter has to be decided on the facts of the each case. The reliance is also placed on the judgment of the Rajasthan High Court in the case of **Cheeku Singh Vs.State of Rajasthan reported in 1998 Cri. L.J. 950.** In that case the Rajasthan High held that proceeding if permitted to be reopened would likely

to occasion failure of justice. In the present case, the petitioner will have right to cross examine the witness and there cannot be any failure of justice merely on account of fact that evidence of additional witness is allowed. Apart from this, I am informed that the witness had appeared and his examination in chief as well as cross examination was also completed. Hence, petition is rejected.

(R. S. MOHITE, J.)